

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re Marriage of CHRISTINE and
CHRISTOPHER STARKMAN.

2d Civil No. B178371
(Super. Ct. No. FL 03-1308)
(San Luis Obispo County)

CHRISTINE STARKMAN,

Appellant,

v.

CHRISTOPHER STARKMAN,

Respondent.

ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 18, 2005, be modified as follows:

1. The paragraph commencing at the bottom of page 7 with "We reject Christine's interpretation" and ending at the top of page 8 with "for such stepped-up basis" is modified to read as follows:

We reject Christine's interpretation of the estate planning instruments, although her position is not unreasonable. To the extent that she argues that Christopher has breached a fiduciary duty to her by disputing the characterization or asserted transmutation of the property, we believe this begs the question

whether transmutation occurred pursuant to established law. Christine also asserts that Christopher's contentions would not allow a stepped-up income tax basis under federal tax law. Whether this is correct or not is beside the point. Whatever the answer to that question, our decision does not create havoc in estate planning as Christine asserts. Here we decide only the sufficiency of language to expressly transmute separate property to community property.

There is no change in the judgment.

Appellant's petition for rehearing is denied.